

In re ) Fair Hearing No. 10,129  
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Appeal of )

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) denying her application for a Family Day Care Registration Certificate. The issue is whether SRS abused its discretion in determining that the petitioner did not meet the statutory and regulatory standards to operate a registered day care facility.

In 1987, SRS learned that a two-year-old girl had wandered away from the petitioner's home and had been found at a nearby business establishment on a busy highway. At the time, the petitioner was providing day care in her home but was not licensed or registered by the Department.

A few days after this incident, the SRS licensing chief made an unannounced visit to the petitioner's home. He knocked on the door and heard children's voices inside, but nobody came to the door. When it became apparent that no adult was home, he had an oil delivery man who was in the neighborhood summon the police.

The licensing chief waited outside the home for one

hour and fifteen minutes until the petitioner returned with two older children (about seven). The petitioner admitted to him that she had left three children all under the age of three alone in the house while she went looking for the two older children who had wandered off. The petitioner also admitted that she was providing day care for children of four different families.

The licensing chief, who was acquainted with the petitioner because she was a former employee of the SRS day care division, discussed the Department's regulations with the petitioner, and advised her she would have to apply for a registration certificate if she wished to provide care for children of more than two families (other than her own).

Shortly thereafter, the petitioner did apply for a certificate, which the Department denied based on the incidents described above. The petitioner did not appeal this decision.

On September 10, 1990, the SRS licensing chief again made an unannounced visit to the petitioner's home. He found the petitioner providing care for children of three families other than her own. He again explained the law requiring caregivers of more than two families to have a registration certificate. Following this visit, the petitioner reapplied for registration. The Department denied this application based on the 1987 incidents (supra) and on the fact that the petitioner was again (on September 10, 1990) providing care for children in excess of the legal

maximum. The petitioner appealed this decision.

At the hearing (held on December 12, 1990) the petitioner explained that the girl who had wandered away from her home in 1987 had been left only for a few minutes while the petitioner answered the phone. The petitioner stated that she now keeps the gates to her yard locked.

The petitioner also stated that she had left the children in her house unattended two years ago because she "panicked" when she could not find the older children. The petitioner admits that this was a gross error of judgement,<sup>1</sup> but stated that it did not and will not happen again.

As for being over capacity, the petitioner stated that on the day the licensing chief visited in September, 1990, one nine-year-old child had been dropped off at her house for only one hour, and that the petitioner received no remuneration for watching her that day. At the time, the petitioner was already caring for children of two other families. The petitioner stated that the girl's parents had called at the last minute, and that she felt she couldn't refuse. At the hearing the petitioner stated that she feels the legal capacity limits conflict with the "realities" of operating a neighborhood day care facility.

ORDER

The Department's decision is affirmed.

REASONS

By law, SRS is authorized to enact regulations and supervise the licensing and registration of day care

facilities. 33 V.S.A., Chapters 27, 34, and 49. The Department's regulations (and common sense) require that at least one caregiver shall be present at all times. SRS Regulation 9 1, Number 1. 33 V.S.A. 9 2852 provides that a person shall not operate an unlicensed day care facility unless care is being provided "for children of not more than two families other than that of the person providing the care." The law does not distinguish between compensated or non-compensated "service". 33 V.S.A. 9 2752(2).

The Department's regulations also provide that a Registration Certificate to operate a family day care may be denied "if it is found that the (applicant) has not complied with these regulations or has demonstrated behavior which indicates an inability to care adequately for children."

Id. 9 5, No. 4. Based on the enormity of the petitioner's lack of judgement in the past, and on her continued disregard of the laws and regulations governing capacity, it must be concluded that the Department was well within its discretion in denying the petitioner's application for a registration certificate.<sup>2</sup> The Department's decision is, therefore, affirmed.

#### FOOTNOTES

<sup>1</sup>The petitioner explained that a few days earlier, the police had warned parents in the neighborhood of a report of a person trying to lure children into a car.

<sup>2</sup>At the hearing, the petitioner introduced several testimonial letters from parents attesting to her ability to care for children. As the board has noted, however (see e.g., Fair Hearing No. 10,013), trust is a crucial element in the "self-policing" system of registered day care homes.

The petitioner struck the hearing officer as a caring and sincere individual. Arguably, it would be harsh for the Department to forever deny her a certificate based solely on the apparently-isolated incidents that occurred more than two years ago. Unfortunately, however, the petitioner continues to demonstrate a lack of understanding of and appreciation for the laws and regulations regarding capacities. The Department (to its credit, in the hearing officer's opinion) suggested that Department-sponsored support and education programs might help the petitioner develop a better awareness and sense of responsibility necessary to become a registered day care provider.

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